

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

David Bethea,)	Civil Action No.: 4:12-cv-3577-RBH
)	
Plaintiff,)	
)	
v.)	ORDER
)	
U.S. Department of Agriculture,)	
)	
Defendant.)	
)	
)	

Plaintiff David Bethea filed this action pro se against the United States Department of Agriculture for violation of the Freedom of Information Act (FOIA), 5 U.S.C. Section 552.¹ This matter is now before the Court for review of the Report and Recommendation of United States Magistrate Judge Thomas E. Rogers, III, made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02(B)(2) for the District of South Carolina. The Magistrate Judge recommends that the Court deny the defendant's [41] Motion for Summary Judgment and deny the plaintiff's [44] Motion to Compel.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this Court. See Mathews v. Weber, 423 U.S. 261, 270-71 (1976). The Court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. See 28 U.S.C. § 636(b)(1).

¹ Plaintiff's claims against the Chesterfield Marlboro EOC Counsel and South Carolina Department of Social Services were previously dismissed by Order of this Court dated October 18, 2013 (ECF No. 26).

The defendant has not filed objections to the Report and Recommendation. Plaintiff filed timely objections.

In the absence of objections to the Report and Recommendation of the Magistrate Judge, this Court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983). The Court reviews only for clear error in the absence of an objection. See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation’ ”) (quoting Fed. R. Civ. P. 72 advisory committee’s note). After a thorough review of the record in this case, the Court finds no clear error in the Magistrate’s recommendation to deny the motion for summary judgment. In order to prevail on a motion for summary judgment under FOIA, the USDA must establish by a reasonably detailed affidavit or declaration that it performed a proper search for documents responsive to the plaintiff’s requests. Ethyl Corp. v. United States Env’tl. Prot. Agency, 25 F.3d 1241, 1247 (4th Cir. 1994). The defendant did not file such an affidavit, and upon inquiry by the Magistrate Judge, indicated that it did not need to do so because all documents had been produced. See ECF No. 51. As noted by the Magistrate, however, in spite of the fact the defendant asserts it has complied with the plaintiff’s request, Plaintiff asserts that the USDA failed to comply with his request for compliance reviews of the Chesterfield Marlboro EOC Counsel. Therefore, the defendant has not met its burden of showing FOIA compliance. Accordingly, the Report and Recommendation of the Magistrate Judge is adopted and incorporated by reference in its analysis regarding the defendant’s motion for summary judgment.

The plaintiff's objection, on the whole, references his complaints with the Chesterfield Marlboro EOC Counsel, a party which has already been dismissed. He also requests the Court to order the USDA to "bring action against the Chesterfield Marlboro EOC Counsel for remedies." (Obj., p. 2, ECF No. 56) Therefore, he appears to be objecting to the Magistrate Judge's recommendation that his motion to compel be denied. The plaintiff's objections on this point lack merit for the reasons stated by the Magistrate Judge, and the Report and Recommendation is adopted with reference to the motion to compel.

Therefore, it is

ORDERED that the Report and Recommendation is adopted and incorporated herein by reference; Defendant's Motion for Summary Judgment (ECF No. 41) is denied; and Plaintiff's Motion to Compel (ECF No. 44) is denied. The Magistrate Judge is directed to hold a status conference on this matter regarding the status of the case and for consideration of AO85 (Notice of Availability of a Magistrate Judge).

IT IS SO ORDERED.

s/ R. Bryan Harwell
R. Bryan Harwell
United States District Judge

June 25, 2015
Florence, South Carolina